Example (2). In 1950 the husband purchased shares of X Company for $10,000. In 1955 when those shares had a fair market value of $30,000, he and his wife purchased real property from A and had it conveyed to them as tenants by the entirety. In payment for the real property, the husband transferred his shares of X Company to A and the wife paid A the sum of $10,000. They later sold the real property for $60,000, divided $24,000 (each taking $12,000) and reinvested the remaining $36,000 in other real property under circumstances that satisfied the conditions set forth in paragraph (d)(2)(ii) of § 25.2515–1. The tenancy was terminated only with respect to the $24,000 divided between them. This termination of the tenancy resulted in a gift of $6,000 by the husband to the wife, computed as follows:

[$30,000 (consideration furnished by husband)÷$40,000 (total consideration furnished by both spouses)]×$24,000 (proceeds of termination)=$18,000

$18,000−$12,000 (proceeds received by husband)=$6,000 gift by husband to wife.

Since the tenancy was terminated only in part, with respect to the remaining portion of the tenancy each spouse is considered as having furnished that proportion of the total consideration for the remaining portion of the tenancy as the consideration furnished by him before the sale bears to the total consideration furnished by both spouses before the sale. See paragraph (c) of § 25.2515–1. The consideration furnished by the husband for the reduced tenancy is $27,000, computed as follows:

[$30,000 (consideration furnished by husband before sale)÷$40,000 (total consideration furnished by both spouses before sale)]×$36,000 (consideration for reduced tenancy)=$27,000

The consideration furnished by the wife is $9,000, computed in a similar manner.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28732, Dec. 29, 1972]

§ 25.2515–4 Termination of tenancy by entirety; cases in which none, or a portion only, of value of gift is determined under section 2515(b).

(a) *In general.* The rules provided in section 2515(b) (see § 25.2515–3) are not applied in determining whether a gift has been made at the termination of a tenancy to the extent that the consideration furnished for the creation of the tenancy was treated as a gift or if the consideration for the creation of the tenancy was furnished by a third party. Consideration furnished for the creation of the tenancy was treated as a gift if it was furnished either (1) during calendar years prior to 1955, or (2) during the calendar year 1955 and subsequent calendar years and calendar quarters and the donor spouse exercised the election to treat the furnishing of consideration as a gift. (For the definition of calendar quarter see § 25.2502–1(c)(1).) See paragraph (b) of this section for the manner of computing the value of gifts resulting from the termination of the tenancy under these circumstances. See paragraph (c) of this section for the rules to be applied where part of the total consideration for the creation of the tenancy and additions to the value thereof was not treated as a gift and part either was treated as a gift or was furnished by a third party.

(b) *Value of gift when entire consideration is of the type described in paragraph (a) of this section.* If the entire consideration for the creation of a tenancy by the entirety was treated as a gift or contributed by a third party, the determination of the amount, if any, of a gift made at the termination of the tenancy will be made by the application of the general principles set forth in § 25.2511–1. Under those principles, when a spouse surrenders a property interest in a tenancy, the creation of which was treated as a gift, and in return receives an amount (whether in the form of cash, property, or an interest in property) less than the value of the property interest surrendered, that spouse is deemed to have made a gift in an amount equal to the difference between the value at the time of termination, of the property interest surrendered by such spouse and the amount received in exchange. Thus, if the husband's interest in such a tenancy at the time of termination is worth $44,971 and the wife's interest therein at the time is worth $55,029, the property is sold for $100,000, and each spouse received $50,000 out of the proceeds of the sale, the wife has made a gift to the husband of $5,029. The principles applied in paragraph (c) of § 25.2515–2 for the method of determining the value of the respective interests of the spouses at the time of the creation of a tenancy by the entirety are equally applicable in determining the value of each spouse's interest in the tenancy at termination,

except that the actuarial factors to be applied are those for the respective spouses at the ages attained at the date of termination.

(c) *Valuation of gift where both types of consideration are involved.* If the consideration furnished consists in part of the type described in paragraph (a) of § 25.2515–3 (consideration furnished by the spouses after 1954, and not treated as a gift in the calendar quarter or calendar year in which it was furnished) and in part of the type described in paragraph (a) of this section (consideration furnished by the spouses and treated as a gift or furnished by a third party), the amount of the gift is determined as follows:

(1) By applying the principles set forth in paragraph (b) of § 25.2515–3 to that portion of the total proceeds of termination which the consideration described in paragraph (a) of § 25.2515–3 bears to the total consideration furnished;

(2) By applying the principles set forth in paragraph (b) of this section to the remaining portion of the total proceeds of termination; and

(3) By subtracting the proceeds of termination received by the donor from the total of the amounts which under the principles referred to in subparagraphs (1) and (2) of this paragraph are to be compared with the proceeds of termination received by a spouse in determining whether a gift was made by that spouse. For example, assume that consideration of $30,000 was furnished by the husband in 1954. Assume also that on February 1, 1955, the husband contributed $12,000 and the wife $8,000, the husband's contribution not being treated as a gift (see paragraph (b) of § 25.2515–1). Assume further that between 1957 and 1965 the property appreciated in value by $40,000 and was sold in 1965 for $90,000 (of which the husband received $40,000 and the wife $50,000). The principles set forth in paragraph (b) of § 25.2515–3 are applied to $36,000 (20,000/50,000×$90,000) in arriving at the amount which is compared with the proceeds of termination received by a spouse. Applying the principles set forth in paragraph (b) of § 25.2515–3, this amount in the case of the husband is $21,600 (12,000/20,000×$36,000). Similarly, the principles set forth in paragraph (b) of this section are applied to $54,000 ($90,000 − 36,000), the remaining portion of the proceeds of termination, in arriving at the amount which is compared with the proceeds of termination received by a spouse. If in this case either spouse, without the consent of the other spouse, can bring about a severance of his interest in the tenancy, the amount determined under paragraph (b) of this section in the case of the husband would be $27,000 (½ of $54,000). The total of the two amounts which are to be compared with the proceeds of termination received by the husband is $48,600 ($21,600+27,000). This sum of $48,600 is then compared with the $40,000 proceeds received by the husband, and the termination of the tenancy has resulted, for gift tax purposes, in a transfer of $8,600 by the husband to his wife in 1965. See paragraph (d) of this section for an additional example illustrating the application of this paragraph.

(d) The application of paragraph (c) of this section may further be illustrated by the following example:

Example. X died in 1948 and devised real property to Y and Z (Y's wife) as tenant by the entirety. Under the law of the jurisdiction, both spouses are entitled to share equally in the income from, or the enjoyment of, the property, but neither spouse, acting alone, may defeat the right of the survivor of them to the whole of the property. The fair market value of the property at the time of X's death was $100,000 and this amount is the consideration which X furnished toward the creation of the tenancy. In 1955, at which time the fair market value of the property was the same as at the time of X's death, improvements of $50,000 were made to the property, of which Y furnished $40,000 out of his own funds and Z furnished $10,000 out of her own funds. Y did not elect to treat his transfer to the tenancy as resulting in the making of a gift in 1955. In 1956 the property was sold for $300,000 and Y and Z each received $150,000 of the proceeds. At the time the property was sold Y and Z were 45 and 40 years of age, respectively, on their birthdays nearest the date of sale. The value of the gift made by Y to Z is $19,942, computed as follows:

Amount determined under principles set forth in § 25.2515–3:

$50,000 (consideration not treated as gift in year furnished)÷$150,000 (total consideration furnished)×$300,000 (proceeds of termination)=$100,000 (proceeds of termination to which principles set forth in § 25.2515–3 apply)

$40,000 (consideration furnished by H and not treated as gift)÷$50,000 (total consideration not treated as gift)×$100,000=$80,000

Amount determined under principles set forth in paragraph (b) of this section:

$300,000 (total proceeds of termination)—$100,000 (proceeds to which principles set forth in § 25.2515–3 apply)=$200,000 (proceeds to which principles set forth in paragraph (b) apply) 0.44971 (factor for Y's latest)×$200,000=$89,942

Amount of gift:	
Amount determined under § 25.2515–3	$80,000
Amount determined under paragraph (b)	89,942
Total	169,942
Less: Proceeds received by Y	150,000
Amount of gift made by Y to Z	19,942

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28732, Dec. 29, 1972]

§ 25.2516–1 Certain property settlements.

(a) Section 2516 provides that transfers of property or interests in property made under the terms of a written agreement between spouses in settlement of their marital or property rights are deemed to be for an adequate and full consideration in money or money's worth and, therefore, exempt from the gift tax (whether or not such agreement is approved by a divorce decree), if the spouses obtain a final decree of divorce from each other within two years after entering into the agreement.

(b) See paragraph (b) of § 25.6019–3 for the circumstances under which information relating to property settlements must be disclosed on the transferor's gift tax return for the ''calendar period'' (as defined in § 25.2502–1(c)(1)) in which the agreement becomes effective.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28732, Dec. 29, 1972; T.D. 7910, 48 FR 40375, Sept. 7, 1983]

§ 25.2516–2 Transfers in settlement of support obligations.

Transfers to provide a reasonable allowance for the support of children (including legally adopted children) of a marriage during minority are not subject to the gift tax if made pursuant to an agreement which satisfies the requirements of section 2516.

§ 25.2518–1 Qualified disclaimers of property; in general.

(a) *Applicability*—(1) *In general.* The rules described in this section, § 25.2518–2, and § 25.2518–3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a transfer made after December 31, 1976. In general, a qualified disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property. For rules relating to the determination of when a transfer creating an interest occurs, see § 25.2518–2(c) (3) and (4).

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. W creates an irrevocable trust on December 10, 1968, and retains the right to receive the income for life. Upon the death of W, which occurs after December 31, 1976, the trust property is distributable to W's surviving issue, *per stirpes.* The transfer creating the remainder interest in the trust occurred in 1968. See § 25.2511–1(c)(2). Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the transfer creating the interest was made prior to January 1, 1977. If, however, W had caused the gift to be incomplete by also retaining the power to designate the person or persons to receive the trust principal at death, and, as a result, no transfer (within the meaning of § 25.2511–1(c)(2)) of the remainder interest was made at the time of the creation of the trust, section 2518 would apply to any disclaimer made after W's death with respect to an interest in the trust property.

(3) Paragraph (a)(1) of this section is applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

(b) *Effect of a qualified disclaimer.* If a person makes a qualified disclaimer as described in section 2518(b) and § 25.2518–2, for purposes of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift. Similarly, the value of a decedent's gross estate for purposes of